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BUMBLE BEE FOODS, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

BUMBLE BEE FOODS, LLC, a Delaware Limited Liability Company,	)	Civil Case No. <b>'11CV1662 BTM POR</b>
Plaintiff,	)	
v.	)	<b>COMPLAINT FOR TRADEMARK</b>
LAMONICA FINE FOODS, LLC, a New Jersey Limited Liability Company,	)	<b>INFRINGEMENT AND OTHER</b>
Defendant.	)	<b>RELIEF</b>
	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
	)	
	)	
	)	
	)	

Plaintiff BUMBLE BEE FOODS, LLC (hereinafter "plaintiff" or "BUMBLE BEE"), by  
and through its counsel, alleges against defendant LAMONICA FINE FOODS, LLC  
(hereinafter "defendant" or "LAMONICA") as follows:

**NATURE OF THE ACTION**

This is an action for trademark infringement and unfair competition under the Lanham  
Trademark Act, 15 U.S.C. § 1051, *et seq.*, and related claims of unfair competition under the  
common law of the State of California.

COMPLAINT FOR TRADEMARK INFRINGEMENT AND OTHER RELIEF  
DEMAND FOR JURY TRIAL

**THE PARTIES**

1  
2 1. Plaintiff BUMBLE BEE FOODS, LLC is a limited liability company organized  
3 and existing under the laws of the state of Delaware with an address at 9655 Granite Ridge  
4 Drive, # 100, San Diego, CA 92123.

5 2. On information and belief, defendant LAMONICA FINE FOODS, LLC is or  
6 purports to be a limited liability company organized and existing under the laws of the State of  
7 New Jersey with an address at 48 Gorton Road, Millville, NJ 08332.

**JURISDICTION AND VENUE**

8  
9 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
10 1338(a) and/or pendent or ancillary jurisdiction for all related claims.

11 4. This Court has personal jurisdiction over LAMONICA because, on information  
12 and belief, LAMONICA transacts business in the Southern District of California. Further, on  
13 information and belief, the defendant systematically and continuously directs business activities  
14 toward and into the Southern District of California through advertisements, promotions, sales,  
15 and through a publicly accessible online website.

16 5. Venue is proper and reasonable in this district under 28 U.S.C. §§ 1391 and 1400  
17 because a substantial part of the events or omissions giving rise to this claim herein occurred in  
18 this district.

**FACTS**

19  
20 6. BUMBLE BEE is a seafood company founded in 1899. It produces a number of  
21 well known seafood products including Bumble Bee Tuna and Bumble Bee Clams. BUMBLE  
22 BEE, together with its affiliates, is the largest branded shelf-stable seafood company in North  
23 America.

24 7. BUMBLE BEE'S products have been promoted and sold in numerous marketing  
25 venues and channels, including without limitation in groceries stores nationwide, retail stores, in  
26 magazines, on television, on the Internet and by diverse other means.

27 8. BUMBLE BEE produces a number unique and distinctive packaging for its  
28 products, including without limitation its "Bumble Bee Chopped Clams" and "Bumble Bee

1 Minced Clams” packaging (the “Bumble Bee Trade Dress”). Exemplary photos of BUMBLE  
2 BEE’S packaging comprising the Bumble Bee Trade Dress are attached hereto as **Exhibit A**.

3 9. The Bumble Bee Trade Dress is a strong, fanciful, inherently distinctive and  
4 famous trademark and a source identifier for BUMBLE BEE. The Bumble Bee Trade Dress is  
5 well known to consumers as being associated with BUMBLE BEE and the BUMBLE BEE®  
6 trademark and has developed secondary meaning. The Bumble Bee Trade Dress is non-  
7 functional.

8 10. BUMBLE BEE has used the Bumble Bee Trade Dress continuously in interstate  
9 commerce at least as early as 2001.

10 11. Sometime after the Bumble Bee Trade Dress became well known and famous  
11 LAMONICA adopted a similar trade dress for its products under the name CAPE MAY  
12 (“LAMONICA’S Packaging”). Exemplary photos of LAMONICA’S Packaging adopting and  
13 copying the Bumble Bee Trade Dress are attached hereto as **Exhibit B**.

14 12. LAMONICA’S Packaging adopts an identical color scheme, layout and overall  
15 design as the Bumble Bee Trade Dress.

16 13. Specifically, LAMONICA’S Packaging contains the same overall yellow color  
17 scheme, blue bordering, red accents, red star shape and white font as the Bumble Bee Trade  
18 Dress.

19 14. Moreover LAMONICA’S Packaging is used for products identical to BUMBLE  
20 BEE’S, namely chopped clams and minced clams. LAMONICA’S Packaging comprises the  
21 same essential size, shape and product description as the packaging employed by BUMBLE  
22 BEE.

23 15. LAMONICA’S Packaging is likely to cause confusion among consumers  
24 including but not limited to initial interest confusion. LAMONICA’S Packaging is further  
25 likely to cause consumer confusion with BUMBLE BEE and the Bumble Bee Trade Dress.  
26 Consumers are likely to be misled that LAMONICA’S products are licensed by, sponsored by  
27 or otherwise affiliated with BUMBLE BEE.

28 16. Both the Bumble Bee Trade Dress and LAMONICA’S Packaging appear in the

1 same types of stores, are marketed, distributed and sold in the same channels of commerce and  
2 are sold to nearly identical consumers.

3 17. On information and belief, LAMONICA was aware of the Bumble Bee Trade  
4 Dress and adopted its packaging to willfully cause consumer confusion in the marketplace with  
5 the Bumble Bee Trade Dress and trade off the considerable goodwill of BUMBLE BEE and  
6 BUMBLE BEE'S well known products.

7 **CLAIMS FOR RELIEF**

8 **First Claim for Relief**

9 **(False Designation of Origin and Trademark Infringement under the Lanham Act)**

10 18. Plaintiff repeats and incorporates by reference the statements and allegations in  
11 paragraphs 1 to 17 of the Complaint as though fully set forth herein.

12 19. Defendant's unauthorized use of the Bumble Bee Trade Dress causes a  
13 likelihood of confusion among consumers and falsely indicates to consumers that defendant's  
14 goods and services originate from, are approved by, are sponsored by, are licensed by, or are  
15 affiliated with plaintiff or plaintiff's goods and services.

16 20. Defendant's unauthorized use of the Bumble Bee Trade Dress as described  
17 herein is likely to cause confusion, to cause mistake, or to deceive customers and potential  
18 customers of the parties by suggesting some affiliation, connection, or association of defendant  
19 with plaintiff. On information and belief, defendant either intentionally induced, caused, or  
20 materially contributed to others infringing the Bumble Bee Trade Dress or continued to produce  
21 or distribute a product knowing or having reason to know the product infringed plaintiff's  
22 Bumble Bee Trade Dress. Further on information and belief, defendant had the right, authority,  
23 and ability to control others infringing Bumble Bee Trade Dress and received a financial benefit  
24 of the infringement.

25 21. Defendant's actions, as set forth herein, constitute false designation of origin and  
26 trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1125, and are deliberate,  
27 willful infringement, egregious in nature with blatant and callous disregard for the rights of  
28 plaintiff.

**Second Claim for Relief**

**(Unfair Competition Under the Lanham Act)**

22. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1 to 21 of the Complaint as though fully set forth herein.

23. Defendant's unauthorized use of the Bumble Bee Trade Dress misleads consumers into believing that they are purchasing products authorized by plaintiff, when in fact they are not. If consumers were aware that defendant's products were not in fact authorized by plaintiff, the consumers would not have likely purchased defendant's products. Plaintiff is harmed by this unauthorized diversion of sales, as there is a likelihood of confusion.

24. The Bumble Bee Trade Dress is inherently distinctive and/or has acquired secondary meaning. Defendant's use of the Bumble Bee Trade Dress in commercial advertising is deceptive, misleading, a false designation, and has a tendency to deceive a substantial portion of the intended audience, and is material in that it is likely to influence purchasing decisions, given the fact that advertising travels in interstate commerce.

25. Defendant's actions, as set forth herein, constitute unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125, all to the damage of plaintiff as previously alleged.

**Third Claim for Relief**

**(Unfair Competition – California Business and Professions Code)**

26. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1 to 25 of the Complaint as though fully set forth herein.

27. Defendant's acts, as set forth herein, constitute unfair competition under California Business and Professions Code § 17200, *et seq.*, all to the damage of plaintiff as previously alleged.

**Fourth Claim for Relief**

**(Trademark Infringement and Unfair Competition - California Common Law)**

28. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1 to 27 of the Complaint as though fully set forth herein.

29. Defendant's acts, as set forth herein, constitute trademark infringement and unfair competition under the common law of the State of California, all to the damage of plaintiff as previously alleged.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff asks that the court grant judgment for plaintiff and against defendant for the following:

A. Defendant, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, be temporarily restrained, and preliminarily and permanently enjoined from their continuing wrongful acts, including but not limited to the following:

i. Using the Bumble Bee Trade Dress or any other confusingly similar designation, in connection with any products.

ii. Competing unfairly with plaintiff in any manner, including unlawfully adopting or infringing on the Bumble Bee Trade Dress or adopting or using any other marks or designations that are confusingly similar to the Bumble Bee Trade Dress.

iii. Conspiring with, aiding, assisting, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (i) and (ii) above.

B. Defendant, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them, deliver for destruction, or show proof of destruction of, any and all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements, and any other materials in their possession or control that depict or reference the Bumble Bee Trade Dress or any other confusingly or substantially similar trademark, and any materials or articles used for making or reproducing the same, as provided by 15 U.S.C. § 1118.

C. Defendant file with the court and serve on plaintiff, within 30 days after the entry and service on defendant of an injunction, a report in writing and attested to under penalty of perjury setting forth in detail the manner and form in which defendant has complied

1 with the provisions of subparagraphs (A) and (B) above.

2 D. Plaintiff recover all damages it has sustained as a result of defendant's  
3 acts and omissions.

4 E. An accounting be directed to determine defendant's profits resulting from  
5 their acts and omissions, and that the profits be paid over to plaintiff, increased as the court  
6 determines is appropriate to the circumstances of this case.

7 F. The Court declare this case an exceptional case and award plaintiff its  
8 reasonable attorneys' fees for prosecuting this action.

9 G. Plaintiff be awarded statutory damages to the full extent allowed by law.

10 H. Plaintiff be awarded enhanced damages to the full extent allowed by law.

11 I. Plaintiff be awarded punitive damages pursuant to California common  
12 law, Business and Professions Code § 14250, or any other relevant statute.

13 J. Plaintiff receive all other relief the court deems appropriate.

14 K. Plaintiff recover its costs of this action and pre-judgment and post-  
15 judgment interest to the full extent allowed by law.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial by the jury on its claims herein and all issues and claims  
18 so triable in this action.

19  
20 Respectfully submitted,

21 Dated: July 27, 2011

MANDOUR & ASSOCIATES, APC

22  
23 s/Ben T. Lila

Ben T. Lila (SBN 246808)

blila@mandourlaw.com

Attorneys for plaintiff,

BUMBLE BEE FOODS, LLC

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

BUMBLE BEE FOODS, LLC, a Delaware Limited Liability Company

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

MANDOUR &amp; ASSOCIATES, APC, 16870 W. Bernardo Drive, Suite 400, San Diego, CA 92127, (858) 487-9300

**DEFENDANTS**

LAMONICA FINE FOODS, LLC, a New Jersey Limited Liability Company

County of Residence of First Listed Defendant Cumberland County, NJ

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1051, et seq.

Brief description of cause:

Trademark Infringement**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/21/2011

s/Ben T. Lila

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_